

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERNON C. JONES, SR.,	§	
	§	No. 524, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0801001556
Appellee.	§	

Submitted: September 22, 2009

Decided: October 20, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 20<sup>th</sup> day of October 2009, upon consideration of the Clerk's notice to show cause why this appeal should not be dismissed as untimely filed and the appellant's response to the notice to show cause, it appears to the Court that:

(1) On September 8, 2009, the appellant, Vernon C. Jones, Sr., filed a notice of appeal from the Superior Court's order dated July 31, 2009 and docketed on August 4, 2009, denying his motion for postconviction

relief. On its face, Jones' notice of appeal appeared to be untimely.<sup>1</sup> In Jones' case, a notice of appeal from the Superior Court's order docketed on August 4, 2009, should have been filed on or before September 3, 2009.<sup>2</sup>

(2) On September 10, 2009, the Clerk issued a notice directing that Jones show cause why the appeal should not be dismissed as untimely. In his response to the notice to show cause, Jones states that he mailed his notice of appeal to the Superior Court and the Department of Justice on August 26, 2009, a date well within the thirty-day appeal period.

(3) "Time is a jurisdictional requirement."<sup>3</sup> The Clerk of this Court, or a Deputy Clerk in any county, must receive a notice of appeal within the applicable time period.<sup>4</sup> Filing a notice of appeal with the Superior Court and/or the Department of Justice within the applicable time period does not constitute compliance with the jurisdictional requirement governing this Court.

(4) Under Delaware law, the jurisdictional defect that was created by the untimely notice of appeal cannot be excused unless Jones can demonstrate that the delay in filing was attributable to court-related

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<sup>1</sup> See Del. Supr. Ct. R. 6(a)(iii) (providing that a notice of appeal in any proceeding for postconviction relief must be filed within thirty days of the entry upon the docket of the order from which the appeal is taken).

<sup>2</sup> *Id.*

<sup>3</sup> *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

<sup>4</sup> Del. Supr. Ct. R. 6(a), 10(a).

personnel.<sup>5</sup> In this case, Jones has not demonstrated, and the record does not suggest, that court-related personnel are responsible for the untimely filing of his notice of appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup> See *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988) (excusing untimely notice of appeal that appellant mistakenly filed with Family Court when actions of Family Court personnel in response to notice of appeal suggested to appellant that appeal was properly filed).